

Environmental Protection Agency

§ 307.31

(1) The proposed action is not a response action authorized under CERCLA;

(2) There is a significant threat to the public health or the environment caused by acute threat of fire, explosion, direct human contact with a hazardous substance, or other similar hazardous situations requiring immediate action, and there is insufficient time to process an application for preauthorization;

(3) The proposed response is a remedial action and the site is not on the NPL; or

(4) The action is to be performed by a State, political subdivision, Indian Tribe through an assistance agreement with the United States, or a person operating pursuant to a contract with the United States.

(h) EPA will deny preauthorization to a person whom the Agency believes is a liable party under section 107 of CERCLA unless negotiations are underway aimed at reaching a judicial or administrative settlement. Such parties may be preauthorized under this paragraph to submit claims to the Fund for response costs up to the maximum amount specified in the PDD.

Subpart C—Procedures for Filing and Processing Response Claims

§ 307.30 Requesting payment from the potentially responsible party.

(a) A claimant must present all claims to any person who is known to the claimant and who may be liable under section 107 of CERCLA at least 60 days before filing a claim against the Fund. The presentation to the potentially responsible party must be a written request for payment, delivered either by certified mail (return receipt requested) or in such a manner as will establish the date of receipt. At a minimum this request must contain:

(1) The name of the claimant (commercial entity or individual);

(2) The name, title, and address of any authorized representative;

(3) The location of the release and cleanup;

(4) The date of the release, if known;

(5) The owner of the property, if other than the claimant;

(6) A description of the response action taken; and

(7) The amount of the request (in dollars);

(8) If applicable, notice of intent to file a subsequent application for preauthorization or claim against the Fund for additional operable units or for a stage of a response action.

(b) Where the potentially responsible party is unknown, the claimant must make a good-faith effort to identify the potentially responsible party prior to submitting a claim. If the potentially responsible party is identified, the claimant must then comply with the procedures of § 307.30(a). Where a potentially responsible party cannot be identified, the claimant may submit a claim to the Fund pursuant to § 307.31. Claims submitted under this paragraph must be accompanied by documentation of efforts to identify potentially responsible parties.

(c) If the claimant and the potentially responsible party agree to a settlement involving a release from liability, the claimant may submit a claim against the Fund for any costs that are not recovered provided the claimant complies with the provisions of § 307.20(c), which require EPA's prior approval of such releases from liability.

(d) If the claim is denied by the potentially responsible party, or has not been satisfied after 60 days of presentation to such party, the claimant may submit a claim to the Fund in accordance with § 307.31.

(e) If the first claim was denied by the potentially responsible party or not responded to, and EPA agrees that there is no reason to believe that subsequent claims would be honored by such potentially responsible party, the denial of the first claim, or lack of response, shall be considered denial of every subsequent claim.

§ 307.31 Filing procedures.

(a) A response claim must be submitted on EPA Form 2075-4 and must include:

(1) Documentation showing that the claimed response activities were preauthorized by EPA;

(2) Documentation showing that the response activity was accomplished in

a manner consistent with the PDD, noting any deviation from preauthorized activities;

(3) Documentation that a search to identify potentially responsible parties was conducted in accordance with § 307.30 and of any contacts with such parties; and

(4) Substantiation that all claimed costs are necessary costs.

(b) Claimants (or their authorized representatives) may amend their claims at any time before final action by EPA. Amendment of claims after final action by EPA will be allowed only at EPA's discretion. Each amendment must be submitted in writing and must be signed by the claimant or authorized representative. The time limitations of § 307.32(i) refer to the date by which an amendment is filed.

(c) Claimants may not pursue both an action in court against potentially responsible parties and a claim against the Fund at the same time for the same response costs. EPA will return claims presented under this subpart when the Agency determines that a claimant has initiated an action for recovery of the same response costs, in court, against a party potentially liable under section 107 of CERCLA.

§ 307.32 Verification, award, and administrative hearings.

(a) Upon receipt of a response claim, EPA will verify that it complies with all filing requirements. Where the claim is incomplete or has significant defects, EPA will return the claim to the claimant with written notification of its deficiencies.

(b) A claim returned to the claimant for failure to comply with the filing requirements may be resubmitted to EPA.

(c) For purposes of this part, a response claim is deemed perfected when EPA determines that the claim complies fully with the specified filing requirements; i.e., the claim is technically complete. When the claim is perfected, a notice will be provided to the claimant of EPA's receipt and acceptance of the claim for evaluation.

(d) EPA may adjust claims and in making a determination whether costs are allowable, EPA will be guided by the Federal cost principles (non-profit

organizations—OMB Circular A-122; States and political subdivisions—OMB Circular A-87; profit-making organizations—48 CFR part 31, subparts 31.1 and 31.2).

(e) In evaluating claims, EPA will determine whether the claimant has settled and satisfactorily completed in accordance with sound business judgment and good administrative practice all contractual and administrative matters arising out of agreements to perform preauthorized response actions. This includes the issuance of invitations for bids or requests for proposals, selection of contractors, approval of subcontracts, settlement of protests, claims disputes, and other related procurement matters. EPA will examine how the claimant assured (e.g., by the use of a subcontract administration system) that work was performed in accordance with the terms, conditions, and specifications of such agreements.

(f) Awards will be made:

(1) Only for necessary costs of completing the response action or stage of an operable unit or of a response action;

(2) Only to the extent that the response actions were preauthorized by EPA pursuant to § 307.23;

(3) Only to the extent that the clean-up was performed effectively, as provided in 40 CFR 300.120(e)(3) and 300.400(h); and

(4) Only to the extent that the clean-up was performed in compliance with the terms and conditions of the PDD.

(g) No award will be made on a claim where the claimant has purported to release a potentially responsible party from liability to the United States for the same costs unless EPA has approved the release in advance.

(h) Where a response action is determined to have been ineffective due to acts or omissions of the claimant, his employees or agents, or any third party having a contractual relationship with the claimant, payment of the claim will be adjusted accordingly. EPA may require the claimant to submit any additional information needed to determine whether the actions taken were reasonable and necessary.

(i) For claims submitted in connection with a settlement reached under